

STATE OF MICHIGAN  
COURT OF APPEALS

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RENEE NEAL,

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL,

Defendant-Appellee.

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UNPUBLISHED

March 22, 2011

No. 295660

Wayne Circuit Court

LC No. 08-124868-CD

Before: CAVANAGH, P.J., and JANSEN and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the circuit court's orders granting defendant summary disposition of plaintiff's claims for race or gender discrimination, and unlawful retaliation, contrary to the Michigan Civil Rights Act, MCL 37.2201 *et seq.* (CRA). We affirm.

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court granted defendant's motion under MCR 2.116(C)(10), which permits summary disposition when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

Plaintiff first challenges the trial court's dismissal of her claim for race or gender discrimination. Plaintiff, an African-American female, argues that defendant discriminated against her on the basis of her race or gender by applying its disciplinary policy to her in a manner different than it did to other employees outside of her protected class. To establish a *prima facie* case of disparate treatment in violation of the Civil Rights Act, plaintiff must prove that she was a member of a protected class and that she was treated differently for the same or similar conduct. *Betty v Brooks & Perkins*, 446 Mich 270, 281; 521 NW2d 518 (1994).

Plaintiff contends that defendant applied its disciplinary policy to her differently because she was disciplined for her first misconduct in November 2007 at step three (suspension), rather than at step one, and by then terminating her employment upon a second violation in September

2008. Contrary to what plaintiff argues, the evidence shows that plaintiff was disciplined in a manner consistent with defendant's disciplinary policy. Plaintiff was disciplined in November 2007 for walking off the job, which is a "Group II" violation under defendant's policy. Group II violations are subject to immediate discharge. Instead, plaintiff was given the lesser penalty of a suspension, placing her at step three under defendant's disciplinary procedure. Further, she was notified, consistent with defendant's policy, that any further disciplinary violation would result in termination.<sup>1</sup> In September 2008, plaintiff was again subject to disciplinary action for violating defendant's attendance policy and her employment was terminated. Because plaintiff was already at step three after her previous violation, her termination was consistent with defendant's written policy and the warning that plaintiff was given at the time of her previous violation. Plaintiff did not present any evidence that defendant disciplined other employees in a different manner for the same or similar conduct. Accordingly, the trial court did not err in granting defendant's motion for summary disposition of plaintiff's discrimination claims.

Plaintiff also challenges the trial court's dismissal of her claim for unlawful retaliation. A prima facie case of retaliation requires the plaintiff to show the following elements:

(1) that [the plaintiff] engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 273; 696 NW2d 646 (2005), amended 473 Mich 1205 (2005) (citation and internal quotation marks omitted).]

"Something more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed." *West v Gen Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003).

Although plaintiff argues that defendant retaliated against her by initially disciplining her at step three in November 2007, as previously discussed, defendant's decision to discipline her with a step-three suspension for walking off the job, a "Group II" violation, is consistent with defendant's written policy. Furthermore, that decision was made before plaintiff made her report of offensive conduct by a co-worker in December 2007, which is the basis for her retaliation claim. Plaintiff states that she can show that she reported the misconduct earlier. However, the transcript pages that plaintiff cites do not support her contentions. Moreover, plaintiff's complaint clearly specifies that the retaliation claim is premised on retaliation for a report that

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<sup>1</sup> Under defendant's policy, "once an employee has received corrective action at one step, if another incident necessitating progressive corrective action occurs within twelve (12) months, it shall be applied at the next higher step." Defendant's policy provides that a step-four violation includes termination.

she made to Human Resources “[o]n or about December 2007 . . . .” The trial court correctly granted defendant’s motion with respect to the retaliation claim because there was no genuine issue of material fact that defendant’s administration of its discipline was not causally connected to plaintiff’s complaint regarding her co-worker.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Deborah A. Servitto